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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,788	07/03/2003	George B. McDonald	215064-00070	6992

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EXAMINER	
OLSON, ERIC	

ART UNIT	PAPER NUMBER
1623	

DATE MAILED: 04/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/613,788	MCDONALD, GEORGE B.	
	Examiner	Art Unit	
	Eric S. Olson	1623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *03 July 2003*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-18* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-18* is/are rejected.

7)☒ Claim(s) *1-18* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *January 3, 2001*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Detailed Action

This application is a continuation of US Patent Application 09/753814, filed January 3, 2001n now abandoned, which claims benefit of provisional application 60/233,194, filed September 15, 2000. Claims 1-18 are pending in this application and examined on the merits herein.

Informalities

The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:
A) The specification to which the oath or declaration is directed has not been adequately identified. See MPEP § 602. The oath refers to the specification of the parent application 09/753814 rather than the instant application
B) The oath fails to claim benefit of the parent application 09/753814.

Specification

If applicant desires to claim the benefit of a prior-filed application under 35 U.S.C. 120, a specific reference to the prior-filed application in compliance with 37 CFR 1.78(a) must be included in the first sentence(s) of the specification following the title or in an application data sheet. For benefit claims under 35 U.S.C. 120, 121 or 365(c), the reference must include the relationship (i.e., continuation, divisional, or continuation-in-part) of the applications.

If the instant application is a utility or plant application filed under 35 U.S.C. 111(a) on or after November 29, 2000, the specific reference must be submitted during the pendency of the application and within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior application. If the application is a utility or plant application which entered the national stage from an international application filed on or after November 29, 2000, after compliance with 35 U.S.C. 371, the specific reference must be submitted during the pendency of the application and within the later of four months from the date on which the national stage commenced under 35 U.S.C. 371(b) or (f) or sixteen months from the filing date of the prior application. See 37 CFR 1.78(a)(2)(ii) and (a)(5)(ii). This time period is not extendable and a failure to submit the reference required by 35 U.S.C. 119(e) and/or 120, where applicable, within this time period is considered a waiver of any benefit of such prior application(s) under 35 U.S.C. 119(e), 120, 121 and 365(c). A benefit claim filed after the required time period may be accepted if it is accompanied by a grantable petition to accept an unintentionally delayed benefit claim under 35 U.S.C. 119(e), 120, 121 and 365(c). The petition must be accompanied by (1) the reference required by 35 U.S.C. 120 or 119(e) and 37 CFR 1.78(a)(2) or (a)(5) to the prior application (unless previously submitted), (2) a surcharge under 37 CFR 1.17(t), and (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2) or (a)(5) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional. The petition

should be addressed to: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

If the reference to the prior application was previously submitted within the time period set forth in 37 CFR 1.78(a), but not in the first sentence(s) of the specification or an application data sheet (ADS) as required by 37 CFR 1.78(a) (e.g., if the reference was submitted in an oath or declaration or the application transmittal letter), and the information concerning the benefit claim was recognized by the Office as shown by its inclusion on the first filing receipt, the petition under 37 CFR 1.78(a) and the surcharge under 37 CFR 1.17(t) are not required. Applicant is still required to submit the reference in compliance with 37 CFR 1.78(a) by filing an amendment to the first sentence(s) of the specification or an ADS. See MPEP § 201.11.

Claim Objections

Claims 1-18 are objected to because of the following informalities: The employment of the parenthetical expressions, "(GVHD)" and "(HVGD)", in claim 1 is considered informal. Claims 2-18 are objected to as depending from an objected base claim. Appropriate correction is required.

Claim Rejections – 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1, 2, 7-11, and 16-18 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for treatment of graft-versus-host or host-versus-graft disease affecting the intestine and liver, does not reasonably provide enablement for host-versus-graft disease affecting organs other than the intestine and liver. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to practice the invention commensurate in scope with these claims.

The Applicant's attention is drawn to *In re Wands*, 8 USPQ2d 1400 (CAFC1988) at 1404 where the court set forth eight factors to consider when assessing if a disclosure would have required undue experimentation. Citing *Ex parte Forman*, 230 USPQ 546 (BdApls 1986) at 547 the court recited eight factors:
(1) The nature of the invention; (2) the state of the prior art; (3) the relative skill of those in the art; (4) the predictability or unpredictability of the art; (5) the breadth of the claims; (6) the amount of direction or guidance presented; (7) the presence or absence of working examples; and (8) the quantity of experimentation necessary.

Nature of the invention: The instant claims involve a method comprising long-term topical oral administration of a therapeutic compound to a subject. A topical oral compound is one which, when ingested orally, does not become distributed systemically, and is thus effective only in a local area of the body. The instant

specification discloses that, "An important aspect of this invention is that the TAC is orally administered such that it is topically administered to the intestinal and/or liver tissue. Thus, oral administration, as that term is used herein, is not intended to encompass systemic administration, such as by intravenous injection. Rather, the TAC has little (if any) systemic availability, but high topical activity on intestinal and/or liver tissue. Such limited distribution results in fewer side effects, which is a significant advantage of this invention." (p. 7, lines 5-11)

The state of the prior art: Corticosteroids are commonly administered to organ transplant recipients to prevent host-versus-graft disease. For example, Punch et. al. (Reference included with PTO-892) mentions corticosteroids as a standard treatment following liver transplant (p. 783, first paragraph) Similarly, Constanzo-Nordin et. al. (reference included with PTO-892) teaches that, among heart transplant recipients, "Single rejection episodes are usually reversed by corticosteroid therapy." (p. II-242, first paragraph) Topically active corticosteroids are known in the art to have a substantially different pattern of bioavailability from traditional systemically active corticosteroids. For example, Thiessen et. al. (Reference included with PTO-892) teaches that topically active corticosteroids, particularly beclomethasone dipropionate and budesonide, both of which are specifically named in the instant invention, have very poor systemic bioavailability outside of the intestine and liver, a property which makes them useful for certain clinical applications. (pp. 491-493) This class of drugs is known to be rapidly metabolized in the liver and thus to never enter systemic circulation in significant dosage.

The relative skill of those in the art: The relative skill of those in the art is high.

The predictability or unpredictability of the art: Corticosteroids are a well-studied and fairly predictable class of compounds. Their mechanism of action is well understood and they have been in use as drugs for a substantial period of time. Topically active corticosteroids, though newer than systemically available corticosteroids, are also well-known and can be expected to function in the same manner as systemically available corticosteroids except that their function is limited to the limited number of tissues that they are available in. However, the prior art contains no instances of using orally delivered, intestinally active topical corticosteroids for the treatment of host-versus-graft disease in tissues in which they are not bioavailable. Because these topically active corticosteroids are not present in tissues other than the intestine or liver after oral administration, using them to treat diseases of organs other than the intestine or liver would necessarily involve a mechanism different than those disclosed in the prior art. Thus their utility or lack thereof for treating host-versus-graft reactions in tissues, such as the heart or lungs, in which they are not bioavailable, is unpredictable given the state of the art.

The Breadth of the claims: The instant claims are reasonably interpreted to cover the administration of any topically active corticosteroid for the treatment of any occurrence of graft-versus-host or host-versus-graft disease. In particular, the range of host-versus-graft diseases covered includes such diseases in any transplanted organ.

The amount of direction or guidance presented: The specification provides guidance for therapeutic methods of delivering a topically active corticosteroid to the

intestine or liver by oral administration. It provides no guidance for methods of administering a topically active corticosteroid to other organs, such as the heart, lungs, or kidneys, by oral administration, or to explicitly limit the invention to the treatment of host-versus-graft disease in the intestine or kidney. Such methods are nontrivial, as topically active corticosteroids are not normally bioavailable in tissues other than the intestine and liver.

The presence or absence of working examples: There are no working examples in the disclosure of any therapeutic methods for treating host-versus graft disease in organs other than the intestine or liver by oral administration of a topically active corticosteroid.

Note that lack of working examples is a critical factor to be considered, especially in a case involving an unpredictable and undeveloped art such as the treatment of diseases using a compound which is not bioavailable in the affected tissues. See MPEP 2164.

The quantity of experimentation necessary: Because the compounds used in the claimed therapeutic methods never reach most tissues in sufficient quantities to be biologically active, they are not capable of exerting any effect on said tissues. Thus the claimed method, without further experimentation, cannot affect autoimmune diseases, such as host-versus-graft disease following a heart transplant, which affect only tissues which would not be reached by an oral topically active corticosteroid. The specification does not mention this major complication or suggest any way to circumvent it while still practicing the invention within the scope of the claim language. Thus one skilled in the

relevant art would not be able to practice the invention for the treatment of host-versus-graft disease following transplant of organs other than the liver or intestine, absent undue experimentation.

Genetech, 108 F.3d at 1366, sates that, "a patent is not a hunting license. It is not a reward for search, but compensation for its successful conclusion." And "patent protection is granted in return for an enabling disclosure of an invention, not for vague intimations of general ideas that may or may not be workable."

Therefore, in view of the Wands factors, as discussed above, especially the lack of precedent in the prior art or guidance in the specification, Applicants fail to provide information sufficient to practice the claimed invention for the treatment of host-versus-graft disease in tissues other than the intestine or liver.

Claim Rejections – 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-10 and 12-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over McDonald et. al. (Reference included in PTO-982).

McDonald et. al. teaches that oral administration of the particular topically active corticosteroid, beclomethasone dipropionate (BDP), **alone** in the form of a capsule or **in combination with prednisone** (in the language of instant claim 16) is useful in a method of treating graft-versus-host disease in a human following organ allograft transplantation or stem cell transplantation for 30 days (see abstract and page 28, 1st paragraph, right column). McDonald et. al. also teaches that the subject has damaged tissue in the intestinal mucosa and liver, in the language of claims 3, 4, and 6 (p. 32, table 4). McDonald et. al. also teaches the effective amount of beclomethasone dipropionate to be administered as 8 mg per day (p. 29, left column, under the heading *Formulation of BDP and Placebo Capsules*), within the range of 4-12 mg/day set by the instant claim 2. McDonald et. al. also discloses that the capsules administered were either uncoated (to dissolve in the stomach) or enteric-coated (to dissolve in the intestine) in the language of instant claim 10(p. 29, left column, under the heading *Formulation of BDP and Placebo Capsules*). McDonald et. al. also reveal the aim for the study therein to compare the effectiveness of oral BDP to that of placebo capsules in the claimed method herein. See abstract and the entire article, especially p. 29, right column, 3rd paragraph. The prior art does not expressly disclose the long-term therapy (i.e., 29-56 days) in the claimed method.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to orally administer BDP alone or with prednisone over the long term (i.e. 29-56 days).

One having ordinary skill in the art at the time of the invention would have been motivated to orally administer BDP alone or with prednisone in the long term (i.e. 29-56 days) since the administration of BDP alone or with prednisone for 30 days or les is known according to the prior art, and a subject may not have fully recovered from their condition after 30 days. Thus, one of ordinary skill in the art would reasonably extend the therapy to the longer period from 30 days or less to 56 days if such treatment is still required after 30 days from the beginning of treatment. Moreover, determination of the time period of administration is considered well within the skill of the artisan, involving merely routine skill in the art.

Thus the invention as a whole is *prima facie* obvious over the prior art.

Claims 1-10 and 12-17 are rejected under 35 USC 103(a) as being unpatentable over Baehr et. al. (Included with PTO-892).

Baehr et. al. teaches that oral administration of the particular topically active corticosteroid, beclomethasone dipropionate, alone in the form of a capsule for 28 days, is a useful method of treating graft-versus-host disease in a human following organ allograft transplantation of human leukocyte antigen mismatched marrow. (p. 1233, right column, under the heading, *clinical efficacy*) Baehr et. al. also teaches that, in subjects already taking prednisone, "The prednisone dose at study entry was maintained throughout the study whenever medically possible," (p. 1232. left column, 3rd paragraph) meaning that BDP was administered in conjunction with another prophylactic agent as taught by instant claim 16. Baehr et. al. also teach the use of BDP in subjects who have

tissue damage of the intestinal mucosa and liver. Baehr et. al. also teaches the effective amount of beclomethasone dipropionate to be 8 capsules of 1 mg each per day, for a total dose of 8 mg per day, in accordance with instant claim 2. (p. 1232, under the heading, *formulation and dosing of beclomethasone dipropionate*) Baehr et. al. also suggest that the purpose of the study is to evaluate whether the oral BDP is a safe effective treatment for the instant disease. See the abstract of Baehr et. al. Baehr et. al. does not explicitly disclose the long-term therapy (i.e. 29-56 days) of the claimed invention.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to orally administer BDP alone or with prednisone over the long term (i.e. 29-56 days).

One having ordinary skill in the art at the time of the invention would have been motivated to orally administer BDP alone or with prednisone in the long term (i.e. 29-56 days) since the administration of BDP alone or with prednisone for 30 days or les is known according to the prior art, and a subject may not have fully recovered from their condition after 30 days. Thus, one of ordinary skill in the art would reasonably extend the therapy to the longer period from 30 days or less to 56 days if such treatment is still required after 30 days from the beginning of treatment. Moreover, determination of the time period of administration is considered well within the skill of the artisan, involving merely routine skill in the art.

Thus the invention as a whole is *prima facie* obvious over the prior art.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over McDonald et. al. (References supplied with PTO-892) or alternately Baehr et. al. (Reference supplied with PTO-892), in view of, alternately, US patents Lundquist, Brancq et. al., or Benita et. al. (US patents 5843465, 5958431, and 6007826, all cited in PTO-892).

McDonald et. al. and Baehr et. al. both teach that oral administration of the particular topically active corticosteroid, beclomethasone dipropionate (BDP), is useful in a method of treating graft-versus-host disease in a human following organ allograft transplantation or stem cell transplantation for 30 days. The prior art does not expressly disclose the long-term therapy (i.e., 29-56 days) in the claimed method, or the administration of the active agent as an emulsion

Lundquist, Brancq et. al., and Benita et. al. all disclose pharmaceutical emulsions, and methods for preparing the same from hydrophobic pharmaceutical compounds. (see, for example, claim 1 of Lundquist, claim 1 of Brancq et. al., or claim 1 of Benita et. al.)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to orally administer BDP alone or with prednisone over the long term (i.e. 29-56 days). It would also have been obvious to prepare the drug as an emulsion, in the manner of claim 11, as disclosed by the aforementioned US patents.

One having ordinary skill in the art at the time of the invention would have been motivated to orally administer BDP in the long term (i.e. 29-56 days) since the administration of BDP alone or with prednisone for 30 days or les is known according to

the prior art, and a subject may not have fully recovered from their condition after 30 days. One of ordinary skill in the art would have been motivated to administer the compound as an emulsion to increase solubility and bioavailability. Thus, one of ordinary skill in the art would reasonably extend the therapy to the longer period from 30 days or less to 56 days if such treatment is still required after 30 days from the beginning of treatment, and to administer the therapeutic agent as an emulsion. Moreover, determination of the time period of administration and optimal dosage formulation is considered well within the skill of the artisan, involving merely routine skill in the art.

Thus the invention as a whole is *prima facie* obvious over the prior art.

Claims 1-16 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Punch et. al. (Included with PTO-892), or alternately Chao (Reference included with PTO-1449), in view of Sequeira et. al. (US patent 6057307, cited in PTO-892).

Punch et. al. teaches that systemically administered corticosteroids are a standard therapy used to reduce the likelihood of rejection in liver transplant recipients, a therapy which is complicated by the presence of multiple side effects including weight gain, hypertension, hyperlipidemia, glucose intolerance, hirsutism, acne, and osteoporosis. (p. 783, first paragraph) The object of the research disclosed by Punch et. al. was an attempt to relieve said side effects by withdrawing corticosteroid treatment 1 year after transplantation.

Chao teaches that, "Corticosteroids are the most widely used "front-line" therapy for the treatment of clinical GVHD [Graft-Versus-Host Disease]. This class of drug has been combined with other immunosuppressants in the prophylaxis against GVHD." (P. 176, under the heading, *Corticosteroids*)

Neither of the aforementioned references explicitly discloses topical administration of corticosteroids in order to treat disease with reduced side effects.

Sequeira et. al. teaches, "A method of treating a corticosteroid-responsive disease of the lower airway passages or lungs, which comprises administering as initial or maintenance therapy to the surfaces of said lower airway passages or lungs, at least once daily, a substantially non-systemically bioavailable amount of aerosolized particles of mometasone furoate effective for treating said disease." (Claim 1) In other words, the invention of Sequeira et. al. comprises a method of locally treating a disease responsive to corticosteroids by administering mometasone furoate in an inhalable form locally to the lungs. Sequeira et. al. also teaches that systemically bioavailable corticosteroids cause unwanted side effects (column 1, lines 51-55), and that a major benefit of the claimed invention is that mometasone furoate avoids this complication because it does not become systemically bioavailable from the gastrointestinal tract. (Column 3, lines 40-54) Although Sequeira et. al. does not mention host-versus-graft disease due to lung transplantation by name, this condition falls within the claim language of, "a disease responsive to corticosteroids," which would be treatable by, "a substantially non-systemically bioavailable amount of aerosolized particles of mometasone furoate effective for treating said disease."

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Punch et. al. or Chao by administering a topically active corticosteroid such as mometasone furoate to the intestinal tract or liver, in place of or in addition to standard systemic corticosteroid therapy, to a patient suffering from either graft-versus-host or host-versus-graft disease affecting the intestine and/or liver.

One of ordinary skill in the art would have been motivated to modify the invention in this way in order to treat graft-versus host and host-versus-graft disease in the intestine or liver without causing the severe systemic side effects which are observed with existing corticosteroid therapy.

One of ordinary skill in the art would have reasonably expected success because, as taught by Punch et. al. and Chao, existing corticosteroids were therapeutically effective against graft-versus host and host-versus-graft disease to the point that they were in common use despite their substantial side effects, and because mometasone furoate was already known, by Sequeira et. al., to be effective at treating corticosteroid-responsive diseases.

Therefore the invention taken as a whole is *prima facie* obvious.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140

F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-18 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-40 U.S. Patent No. 6096731 (Cited in PTO-892). Although the conflicting claims are not identical, they are not patentably distinct from each other because Patent 6096731 is drawn to a method for preventing tissue damage associated with graft-versus-host disease having undergone hematopoietic stem cell transplantation, which is not patentably distinct from the invention claimed by the instant application. The claims of the instant application are drawn to a method of treating a patient requiring long-term therapy following hematopoietic stem cell transplantation having graft-versus-host disease or following organ allograft transplantation having host-versus-graft disease comprising same active agents. One having ordinary skill in the art at the time the invention was made would have been motivated to employ the same active agents in a method of treating a patient requiring long-term therapy following hematopoietic stem cell transplantation having graft-versus-host disease or following organ allograft transplantation having host-versus-graft disease since the same active agents are known to be useful in a method

for preventing tissue damage associated with graft-versus-host disease having undergone hematopoietic cell transplantation or intestinal or liver transplantation. Therefore, one of ordinary skill in the art at the time of the invention would reasonably have expected that these active agents would have been beneficial in the instant claimed method.

Summary

No claims are allowed in this invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric S. Olson whose telephone number is 571-272-9051. The examiner can normally be reached on Monday-Friday, 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shaojia Anna Jiang can be reached on (571)272-0627. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Eric Olson
Patent Examiner
AU 1623
4/13/06

Anna Jiang
4/14/06
Supervisory Patent Examiner
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